

# IN THE MICHIGAN COURT OF APPEALS

## ORDER

Re: **People of MI v Man Lewis Jr**  
Docket No. **259267**  
L. Ct. No. **82-004268-FY**

William C. Whitbeck, Chief Judge, acting under MCR 7.203(F)(1) and 7.216(A)(10),  
orders:

The motion to waive fees is GRANTED for this case only.

The delayed application for leave to appeal is DISMISSED for lack of jurisdiction seeing as appellant's motion for relief from judgment under MCR 6.500 *et seq.* would be actually his second motion requesting this type of relief since 1995 where no newly discovered evidence or retroactive change in the law may be found. MCR 6.502(G). Appellant's reliance upon *Blakely v Washington*, 542 US \_\_\_\_; 124 S Ct 2531, 2540; 159 L Ed 2d 403, 417 (2004), as a retroactive change in the law is misplaced seeing as the United States Supreme Court has already determined its holding does not apply to indeterminate sentencing systems like the one used by this state. Our Supreme Court has also determined, albeit in a footnote, that *Blakely, supra*, does not apply to the sentencing system used in our state. *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004). See also *People v Drohan*, \_\_\_\_ Mich App \_\_\_\_; \_\_\_\_ NW2d \_\_\_\_ (2004), slip op at 6-7 n 4 (this Court is bound by our Supreme Court's determination in *Claypool, supra*). Likewise, appellant's reliance upon *People v Morey*, 461 Mich 325, 331; 603 NW2d 250 (1999), as another retroactive change in the law is misplace seeing as the purported change has actually been the law for over 100 years. See *People v Cook*, 96 Mich 368; 55 NW 980 (1893).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 14 2005

Date

*Sandra Schultz Mengel*  
Chief Clerk